

## **AGREEMENT**

**THIS PROFESSIONAL SERVICE CONTRACT**, made and entered into by and between **THE GREATER LOUISVILLE WORKFORCE INVESTMENT BOARD, d/b/a KentuckianaWorks, 410 W. Chestnut Street, Suite 200, Louisville, Kentucky 40202** (hereinafter referred to as "KentuckianaWorks"), and the **UNIVERSITY OF KENTUCKY RESEARCH FOUNDATION**, with offices and place of business at 109 Kinhead Hall, Lexington, KY 40506-0057 (hereinafter referenced to as "**CONSULTANT**").

### **WITNESSETH:**

**WHEREAS**, KentuckianaWorks is in need of certain professional services with regard to evaluation of WIA programs; and

**WHEREAS**, the Consultant has been determined by KentuckianaWorks to have the necessary experience, expertise and qualifications to provide those services;

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

#### **I. SCOPE OF PROFESSIONAL SERVICES**

**A.** Consultant shall, at the request of KentuckianaWorks, provide services under the terms of this Agreement. KentuckianaWorks may review the Consultant's work product from time to time for purposes of determining that the services provided are within the scope of this Agreement.

**B.** Consultant, while performing the services rendered pursuant to this Agreement, may utilize agents or employees of such Consultant. However, such use must be documented in the invoice submitted for those services.

C. If from time to time Consultant needs to utilize the records or personnel of KentuckianaWorks in performing the services required in this Agreement, then Consultant shall notify the proper agent of KentuckianaWorks and arrangements may be made to provide the necessary records or personnel. However, at no time shall KentuckianaWorks make available its resources without the full consent of both parties.

D. The services of Consultant shall include but not be limited to those outlined in the attached Proposal dated May 29, 2008 and marked Exhibit A.

E. KentuckianaWorks shall be the owner of all work product and deliverables produced by Consultant in carrying out this agreement. However, consultant shall have the right to publish any information or material for scholarly purposes resulting from the conduct of the attached proposal marked Exhibit A.

## **II. FEES AND COMPENSATION**

A. Consultant shall be paid the sum of \$55,000.00, subject to the appropriation provisions set out below, for professional services rendered according to the terms of this agreement, including out-of-pocket expenses.

B. Unless otherwise agreed in writing by KentuckianaWorks, payment shall only be made pursuant to a detailed invoice, which invoice shall indicate a descriptive accounting of the services provided under the contract and out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the Consultant's invoice when payment is requested.

Payments are contingent on approval of contract by Metro Louisville Council and the receipt of detailed invoices. They shall be made on the following schedule:

- Payment of \$15,000 on September 5, 2009
- Payment of \$15,000 on October 5, 2009
- Payment of \$15,000 on November 5, 2009
- Payment of \$10,000 upon satisfactory completion of the services and final report is delivered to KW

C. Consultant shall only be reimbursed out-of-pocket expenses if such expenses are reasonable in amount and necessary to accomplish the scope of services of this contract. KentuckianaWorks will not reimburse first class airfare, personal phone calls, short term parking expenses, or other premium type expenses. KentuckianaWorks reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

D. KentuckianaWorks must obtain appropriations from Louisville Metro Council in order to pay Consultant the amounts due under this contract. Regardless of any other provision in this contract, if Louisville Metro Council does not appropriate sufficient funds for KentuckianaWorks to pay Consultant for its work under this contract, then KentuckianaWorks shall not be responsible for paying any amount not appropriated by Louisville Metro Council and Consultant shall have no recourse against KentuckianaWorks for any amount not so appropriated. KentuckianaWorks shall notify Consultant immediately if KentuckianaWorks does not receive appropriation for all funds to be paid under this contract. If no funds are appropriated by Louisville Metro Council,

this contract shall immediately terminate upon KentuckianaWorks so notifying Consultant, and neither party shall have any further obligations under the contract. If some but not all funds are appropriated by Louisville Metro Council, the parties shall negotiate in good faith to amend the contract to work within the amount so appropriated.

### **III. DURATION**

A. This is a professional service contract, which shall begin on April 1, 2009 and shall continue through and including June 30, 2010.

B. This Agreement may be terminated without cause by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. In the event of termination without cause, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement.

C. This Agreement may be terminated at any time for cause by KentuckianaWorks upon breach of any provision of this Agreement by Consultant. KentuckianaWorks shall provide written notice of termination to Consultant specifying the termination date and time. If KentuckianaWorks terminates this Agreement for cause, KentuckianaWorks shall have the right to withhold any payments due under this Agreement and KentuckianaWorks may pursue its remedies in law or equity through all appropriate legal action.

#### **IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this agreement nor does it cause Consultant to be an officer or official of KentuckianaWorks. By executing this agreement, the parties hereto certify that Consultant's performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

#### **V. RECORDS-AUDIT**

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Consultant's fees and costs which are chargeable to KentuckianaWorks under this Agreement; and KentuckianaWorks shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it.

#### **VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

Consultant and the University of Kentucky (U of K), as agencies of the Commonwealth of Kentucky, although vested with sovereign immunity, are subject to the Board of Claims Act, KRS 44.070-44.160. Claims against Consultant and U of K relating to personal injury or property damage may be filed and decided under the provisions of the Act. To the extent permitted by that Act and other applicable law, the

Consultant, as agent for the University of Kentucky, shall defend, indemnify and hold harmless KentuckianaWorks and Louisville Metro Government from and against any and all claims which may result from any error or omission arising out of Consultant's and U of K's performance under this Agreement.

#### **VII. REPORTING OF INCOME**

The compensation payable under this Agreement is subject to federal, state and local taxation. Regulations of the Internal Revenue Service require KentuckianaWorks to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish KentuckianaWorks with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to KentuckianaWorks as may be required by the IRS or the State Department of Revenue.

#### **VIII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

## **IX. AUTHORITY**

The Consultant, by execution of this Agreement, does hereby certify and represent that it is qualified to do business in the State of Kentucky, and has full right, power and authority to enter into this Agreement.

## **X. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

- (a) He, or any member of his immediate family has a financial interest therein; or
- (b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
- (c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party.

Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a

purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.



## **XI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

## **XII. OCCUPATIONAL HEALTH AND SAFETY**

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify KentuckianaWorks and the Louisville/Jefferson County Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to the extent permitted by law to indemnify, defend and hold KentuckianaWorks and the Louisville/Jefferson County Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

### **XIII. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

### **XIV. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

### **XV. COUNTERPARTS**

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

### **XVI. CALCULATION OF TIME**

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of

time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

## **XVII. CAPTIONS**

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

## **XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS**

The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of the contract.

## **XIX. NOTICES**

All notices required under this contract shall be in writing and addressed as follows:

### **1. Technical Representative**

For KentuckianaWorks:  
Michael Gritton  
Kentuckiana Works

410 Chestnut Street, Ste. 200  
Louisville, KY 40202  
Telephone 502/574-3069

For CONSULTANT

Kenneth Troske  
Department of Economics  
335 BA Gatton College of Business and Economics  
Lexington, KY 40506-0034  
Telephone 859/257-1282

**2. Administrative Representative**

For KentuckianaWorks:

Michael Gritton  
Kentuckiana Works  
410 Chestnut Street, Ste. 200  
Louisville, KY 40202  
Telephone 502/574-3069


For CONSULTANT

Wendy Compton  
University of Kentucky Research Foundation  
109 Kinkead Hall  
Lexington, KY 40506-0057  
Telephone 859/257-9422


Such notices shall be given by personal delivery or by overnight delivery or by certified mail and shall be effective upon delivery or if mailed, one day after mailing by overnight carrier and three days after mailing if by certified mail, properly addressed and postage prepaid.

WITNESS the signatures of the parties to this Agreement.


APPROVED AS TO FORM:  
MICHAEL J. O'CONNELL

  
Asst. Jefferson County Attorney  
Date: 7/30/09

KENTUCKIANAWORKS

By:   
Title: Executive Director  
Date: 8/28/09

CONSULTANT

By:   
Deborah K. Davis  
Associate Vice President for Research  
Director, Office of Sponsored Projects Administration  
Associate Director, University of Kentucky Research Foundation  
Title: \_\_\_\_\_  
Date: 8-14-09

Taxpayer Identification No.  
(TIN): \_\_\_\_\_

Louisville/Jefferson County  
Revenue Commission Account  
No.: \_\_\_\_\_

**WRITTEN FINDINGS** University of Research Foundation KentuckianaWorks 2009-10  
**EXPLAINING NECESSITY FOR USING NONCOMPETITIVE NEGOTIATION FOR PSC**

This document constitutes written request and findings, as required by KRS 45A.380 stating the need to purchase through noncompetitive negotiation for PSC Contract # \_\_\_\_\_. By the signatures listed below, the Requesting Department has determined, and the Chief Financial Officer concurs, that competition is not feasible because:

\_\_\_\_\_ A. An emergency exists which will cause public harm as a result of the delay in competitive procedures. **\*\* Mayors Approval required for emergency purchases exceeding \$10,000.**

\_\_\_\_\_ B. There is a single source within a reasonable geographic area of the supply or service to be procured or leased (attach sole source determination from the Purchasing Department).

  X   C. The contract is for the services typically provided by a licensed professional, such as an attorney, architect, engineer, physician, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; an artist such as a sculptor, aesthetic painter, or musician; or a non-licensed professional such as a consultant, public relations consultant, advertising consultant, developer, employment department, construction manager, investment advisor, or marketing expert and the like.

\_\_\_\_\_ D. The contract is for the purchase of perishable items purchased on a weekly basis, such as fresh fruits, vegetables, fish, or meat.

\_\_\_\_\_ E. The contract is for replacement parts where the need cannot reasonably be anticipated and stockpiling is not feasible.

\_\_\_\_\_ F. The contract is for proprietary items for resale.

\_\_\_\_\_ G. The contract or purchase is for expenditures made on authorized trips outside the boundaries of the city.

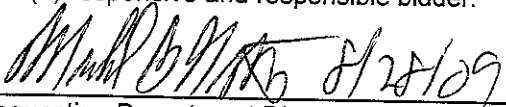
\_\_\_\_\_ H. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids.

\_\_\_\_\_ I. The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, or unemployment liability insurance.

\_\_\_\_\_ J. The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the Metro Government.

\_\_\_\_\_ K. The contract was solicited by competitive sealed bidding and no bids were received from a responsive and responsible bidder.

\_\_\_\_\_ L. Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder.

  
 \_\_\_\_\_  
 Requesting Department Director      Date

\_\_\_\_\_  
 Cabinet Secretary      Date  
 (When required by cabinets policy)

\_\_\_\_\_  
 \*\*Mayor      Date  
 \*\*Signature is required only for Written Finding A

**CONTRACT DATA SHEET**PSC Type (check one): ☒ New ☐ Renewal ☐ Addendum**Contractor Information**

1. Legal Name of Contractor: University of Kentucky Research Foundation
2. Address: 206 Kinkaid Hall
3. City/ State & Zip: Lexington, KY 40506-0057
4. Contact Person Name & Telephone Number: Wendy Compton 859-257-4826
5. Revenue Commission Taxpayer ID#: N/A
6. If registration is not required please explain:
7. Is account in good standing: N/A
8. Federal Tax ID # (SSN if sole proprietor):

**Department Information**

9. Requesting Department: Workforce Investment Board, dba KentuckianaWorks
10. Contact Person Name & Telephone: J. Michael Dunbar 643-7452

**Contract Information**

11. Not to exceed amount: \$55,000
12. Are expenses reimbursed? Yes
13. If yes list allowable expenses and maximum amount reimbursable: Limited to data acquisition.
14. Beginning and ending date of the contract: 7-1-09 through 6-30-10.
15. Coding: 2551 -505 -2031 -203630 -521301
16. Scope & Purpose of the contract: In-depth evaluation of KentuckianaWorks' Workforce Investment Act program.

**Authorizations**

 County Attorney Review Approved as to Form:
Department Director: 

Date: 8/28/09

Signature certifies:

☒  
☒  
☒

Funds are available

Contractor is registered and in good standing with the Revenue Commission

Human Relations Commission registration requirements have been met

CPL Risk Management Division of Finance - Certifies Insurance requirements satisfied: 9-1-09

Cabinet Secretary : N/A  
(If applicable)

Date: